THE HON'BLE SRI JUSTICE K.C. BHANU

W.P. No. 17504 of 2001

Dated: --08—2005.

Between:

V.V. Mahendranath

…Petitioner.

A n d

Dy. G.M. Syndicate Bank, Zonal Office,

Somajiguda, Hyderabad and another.

…Respondents.

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 17504 of 2001

O R D E R:

Challenging the action of the 1st respondent in imposing the punishment of compulsory retirement on the petitioner by order date 30.1.2001 as confirmed by the 2nd respondent vide order dated 17.5.2001, the present writ petition is filed.

The case of the petitioner is that the 1st respondent issued a charge sheet alleging that he has been absented from duties unauthorisedly, for which he submitted explanation in which he also requested the authority to view the matter under Clause 19.12(e) of the Bipartite settlement. According to the said clause, enquiry need not be held if the employee makes a voluntary admission of his guilt in reply to the show-cause notice. The said plea was not considered and the 1st respondent appointed Enquiry Officer and the Enquiry Officer submitted report stating that the charges leveled against the petitioner were fully established. The Enquiry Officer did not examine any officer on the management side. Basing on the above report the 1st respondent passed the punishment order making him to compulsorily retire. The grievance of the petitioner is that the 1st respondent disciplinary authority did not consider the facts and his representation. Hence the writ petition.

On the other hand, the respondents filed counter admitting that the respondent bank and the petitioner are governed by the provisions of the Bipartite settlement which forms the conditions of service for the employees like the petitioner working the Banking Industry. However, it is stated, the management is the sole judge to decide as to which course of action would suit to take disciplinary action against a particular employee and the petitioner

cannot claim/demand the respondent management to follow a particular procedure by leaving the other alternatives. In this case, the management had to issue the chargesheet and to go for a departmental enquiry since the petitioner's acts were repetitive in nature and also affecting the customer service and discipline among other employees. The petitioner had attended the enquiry held by the Enquiry Officer and admitted the misconducts/charges leveled against him in the charge sheet after going through the documents and the Enquiry Officer also submitted a report holding that the charges leveled against the petitioner are conclusively proved during the enquiry. When the petitioner himself admitted the charges after going through the documents and did not dispute the documentary evidence produced by the management during the enquiry, there was no need for the management to lead any evidence. The petitioner was awarded with the punishment of compulsory retirement by the disciplinary authority after following all the required procedure in accordance with the service conditions applicable to the petitioner. Hence the writ petition is liable to be dismissed.

Learned counsel for the petitioner contended that for a valid and good cause the petitioner had remained absent and for the absence he applied for leave for grant along with medical certificate and that aspect has not been considered by the Enquiry Officer and also the disciplinary authority. The petitioner is having more than 19 years of service. The correctness and genuineness of the leave applications have not been decided and that the punishment imposed by the respondents is disproportionate to the proved misconduct and the disciplinary authority has not taken into consideration the explanation given by the petitioner and that his

case has not been considered in accordance with the Bipartite settlement. The appellate authority also did not consider his explanation for his absence and therefore he prays to set aside the same.

On the other hand, learned standing counsel for the respondents contended that after giving full opportunity to the petitioner the enquiry was conducted and even in the explanation given by the petitioner he admitted about the charges. Except stating that he was disabled on medical grounds, there is no proof filed to show that his absence was willful or wanton. Taking all these facts and circumstances into consideration, instead of dismissal compulsory retirement was ordered. Without sanction or permission from the competent authority, absenteeism for more than 30 days is a ground for imposition of major penalty and there are absolutely no grounds to interfere with the punishment imposed. He also referred to several decisions which will be referred to at appropriate time.

The 1st respondent issued charge sheet dated 7.6.2000 against the petitioner leveling five charges, namely, (1) absence without leave, (2) irregular attendance, (3) incurring debts to an exent considered by the management as excessive, (4) gross misconducts of remaining unauthorisedly absent continuously without any information for a period exceeding 30 days and (5) doing acts prejudicial to the interest of bank. The petitioner gave an explanation dated 8.7.2000 wherein he has explained that he was forced to go on borrowing funds because of his ill-health. It is contended by the petitioner that the Enquiry Officer did not examine any officer on the management side but marked 14 documents. Out of 5 charges, the

Enquiry Officer found that the first 3 are shown as minor misconduct and the remaining were shown as gross misconduct. When the 1st respondent proposed compulsory retirement from service, a notice was served for personal hearing on 15.1.2001 and after considering his explanation the impugned order is passed. No infirmity is pointed out by the learned counsel for the petitioner that the principles of natural justice have been violated in conducting enquiry. So also it is not his case that the procedure contemplated for conducting enquiry has not been followed. In this appeal, learned counsel for the petitioner mainly argued the case with reference to Charge Nos. 4 and 5 i.e. gross misconduct of remaining unauthorisedly absent continuously without any permission for a period exceeding 30 days and gross misconduct of acts prejudicial to the bank.

It is not in dispute that the rules governing the service conditions of the employees of the respondent bank are governed by the bipartite settlement entered into between the Banks and the workmen in the manner contemplated in Section 18 of the Industrial Disputes Act, 1947. Therefore it is a statutory settlement and it binds on the parties. Clause 19.5(p) of the bipartite settlement dated 19.10.166 reads *"remaining unauthorisedly absent without intimation continuously for a period exceeding 30 days is a gross misconduct. Under clause 19.6, an employee found guilty of gross misconduct be dismissed without notice and without his misconduct condoned and be merely discharged*".

Even the petitioner was absent for a continuous period of more than 30 days from 1.9.1999 to 3.12.1999. Including the above period, the petitioner was also absent for more than 145 days in

between 6.12.1999 and 30.4.2000. For the charge sheet given by the respondent-bank, the petitioner gave an explanation stating that he became a patient of duodenal ulcer and also suffered from urinal calculi (stones in the kidney) and that has been resulting in his absenting from duties. He further stated that his wife has been suffering from Thyroid ailment and needs continuous treatment. In his explanation dated 4.10.2000 he stated that he submitted leave applications along with medical certificates at the time of joining the Branch, but unfortunately the leave was not granted to him though he got sufficient sick leave to his credit. Therefore, basing on the explanation the learned counsel contended that a proper and reasonable explanation was given for his unauthorized absence.

Now it has to be seen whether the absence of the petitioner is willful, wanton or deliberate or beyond his control?

Except stating that in the circumstances stated by him in the explanation he was unable to attend the office, nothing has been proved. If the ailment is such that he was prevented from discharging his duties, he has to prove the same by examining the witnesses or by producing documents on which he is relying, including the medical certificates. As already held, it is not a case of denial of opportunity to the delinquent in adducing any evidence. Even according to the petitioner, he submitted his leave application along with medical certificate on the date of joining the Branch. That is not a proper explanation. The diseases, even according to the petitioner, are not so serious which prevent a person to intimate the reason or cause for absence well in advance. For about 94 days he was absent without intimation or informing the concerned authorities. Leave alone the

grant of leave, he has not even taken any pains to intimate the respondent-Bank about his absence. Submitting leave application at the time of joining along with the medical report is not sufficient since the nature and functions of the petitioner are such that prior intimation of his absence is very much essential. The findings of the Enquiry Officer would clearly reveal that because the delinquent admitted the charges leveled against him and supported by the documents placed on record, he came to the conclusion that the charges leveled against the petitioner are proved. Before the appellate authority a personal hearing was also given. So, after giving a reasonable opportunity the appellate authority passed the order. Since the disciplinary authority found that the gravity of the acts of misconduct committed by the petitioner deserves major punishment and since it is not a case of financial irregularity, the disciplinary authority also given the punishment of compulsory retirement.

Learned counsel for the respondents relied upon a decision in **Om Kumar v. Union of India** wherein the apex Court held:

> "We shall therefore have to examine the cases of Shri Om Kumar and of Shri Virendra Nath from the standpoint of basic principles applicable under administrative law, namely, Wednesbury principles and the doctrine of proportionality. It has, therefore, become necessary to make reference to these principles and trace certain recent developments in the law".

He relied upon another decision in **Union of India v. M.E.**

Reddy wherein it is held:

> "On a perusal of the impugned order passed by the Government of India it would appear that the order fully conforms to all the conditions mentioned in Rule 16 (3). It is now well settled by a long catena of authorities of this Court that compulsory retirement after the employee has put in a sufficient number of years of service having qualified for full pension is neither a punishment nor a stigma so as to attract the provisions of Article 311 (2) of the Constitution. In fact, after an employee has served for 25 to 30 years and is retired on full pensionary benefits, it cannot be said that he suffers any real prejudice. The object of the Rule is to weed out the dead wood in order to maintain a high standard of efficiency and initiative in the State Services. It is not necessary that a good officer may continue to be efficient for all times to come. It may be that there may be some officers who may possess a better initiative and higher standard of efficiency and if given chance the work of the Government might show marked improvement. In such a case compulsory retirement of an officer who fulfills the conditions of Rule 16 (3) is undoubtedly in public interest and is not passed by way of punishment. Similarly, there may be cases of officers who are corrupt or of doubtful integrity and who may be considered fit for being compulsorily retired in public interest, since they have almost reached the fag end of their career and their retirement would not cast any aspersion not does it entail any civil consequences. Of course, it may be said that if such officers were allowed to continue they would have drawn their salary until the usual date of retirement. But this is not an absolute right which can be claimed by an officer who has put in 30 years of service or has attained the age of 50 years. Thus, the general impression which is carried by most of the employees that compulsory retirement under these conditions involves some sort of stigma must be completely removed because

Rule 16 (3) does nothing of the sort".

The learned counsel further relied upon a decision of the apex Court in **Union of India v. Col.J.N.Sinha and another** wherein it is held:

> "Now coming to the express words of Fundamental Rule 56 (j), it says that the appropriate authority has the absolute right to retire a Government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before Courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision. The 1st respondent challenged the opinion formed by the Government on the ground of mala tide. But that ground has failed. The High Court did not accept that plea. The same was not pressed before us. The impugned order was not attacked on the ground that the required opinion was not formed or that the opinion formed was an arbitrary one. One of the conditions of the 1st respondent's service is that the Government can choose to retire him any time after he completes fifty years if it thinks that it is in public interest to do so. Because of his compulsory retirement he does not lose any of the rights acquire by him before retirement. Compulsory retirement involves no civil consequences. The aforementioned Rule 56 (j) is not intended for taking any penal action against the Government servants. That rule merely embodies one of the facets of the 'pleasure' doctrine embodied in Art. 310 of the Constitution. Various considerations may weigh with the appropriate authority while

exercising the power conferred under the rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organizations and more so in Government organizations, there is good deal of dead wood, it is in public interest to chop off the same. Fundamental Rule 56 (j) holds the balance between the rights of the individual Government servant and the interests of the public. While a minimum service is guaranteed to the Government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest".

He relied on another decision in **State of Assam v. M.K. Das** wherein it is held:

"Over and above these circumstances, it is also to be seen that the enquiry officer was not the disciplinary authority competent to impose the punishment against the respondent. The competent authority is the Superintendent of Police. The show cause notice, issued on October 18, 1958 as well as the order of dismissal passed by the Superintendent of Police, dated December 3, 1958 clearly show that the said officer has independently gone into the evidence on record in respect of the charges for which the respondent was tried and has, after taking into account the explanations furnished by him, independently come to the conclusion that the respondent is guilty. Similarly, the Deputy Inspector-General-of-Police, Range Assam, before whom the

respondent filed an appeal has also very elaborately and in considerable detail discussed the entire evidence on record and has agreed with the conclusions regarding the guilt of the respondent. We have already held that there is no violation of the rules of natural justice in the enquiry proceedings. Even assuming that there was any defect in the said enquiry proceedings, inasmuch as the punishing authority and the appellate authority, the Superintendent of Police and the Deputy Inspector-General-of-Police, respectively, have independently considered the matter and found the respondent guilty on the evidence on record, it must be held that in the circumstances of this case there has been no violation of the principles of natural justice when the order of dismissal was passed".

He also relied upon another judgment of the apex Court in **Union Bank of India v. Vishwa Mohan** wherein it is held:

> "After hearing the rival contentions, we are of the firm view that all the four charge sheets which were inquired into relate to serious misconduct. The respondent was unable to demonstrate before us how prejudice was caused to him due to non-supply of the Inquiry Authority's report/findings in the present case. It needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/ depositors would be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non-furnishing of the inquiry report/findings to him".

The learned counsel for the respondents relied on yet

another decision of the apex Court in **Baikuntha Nath Das v. Chief District Medical Officer** wherein it is held:

"The following principles emerge from the above discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is Passed (a) mala fide, or (b) that it is based on no evidence, or (c) that it is arbitrary in the sense that no reasoanble person would form the requisite opinion on the given material in short; if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/ character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the

> showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.
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> Interference is permissible only on the grounds mentioned in (iii) above. This object has been discussed in paras 29 to 31 above".

From the above decisions it is clear that the order of compulsory retirement does not amount to punishment and the principles of natural justice are not required to be observed in passing an order of compulsory retirement. It is also made clear from the above decisions that unless the punishment imposed by the disciplinary authority and as confirmed by the appellate authority shocks the conscience of this Court, normally this Court will not interfere with the administrative decision under the guise of judicial review. The findings cannot be shown to be perverse and even according to the case of the petitioner it is not *mala fide* exercise of powers by the disciplinary authority. So also, there is no arbitrariness in imposing the punishment. The unauthorized absence or non-intimation to the concerned authorities would not only cause dislocation of work but also causes great hardship to the customers of the bank. This is not the first occasion for the petitioner to absent himself. On an earlier occasion also the disciplinary authority vide proceedings dated 13.5.2000 imposed punishment of stoppage of one increment for a period of six months for his unauthorized absence for 40 days between 26.6.1999 and 31.8.1999. He was also imposed with a punishment of stoppage of increment and the basic pay was reduced to the next lower stage and in spite of the said punishments the petitioner does not mend or correct himself. It is not a case where the absence was beyond his control. The health problems faced by the petitioner are not so serious so as to disable him to intimate his absence well in advance or during the course of absence. So, considering the totality of the facts and circumstances

the disciplinary authority found that the acts of misconduct committed by the petitioner were serious in nature.

Having regard to the facts and circumstances of the case, the order under challenge does not suffer from any incurable legal infirmities so as to call for interference by this Court.

The writ petition is devoid of merit and it is accordingly dismissed.

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K.C. Bhanu, J.

Date: --08—2005.

MVB.